

New Hampshire Board of Education

Student/Sunapee School Board

SB-FY-10-02-005

Hearing Officer Report & Recommendation

Introduction

This case is an appeal of a local school board decision regarding manifest educational hardship under RSA 193:3 and Ed 320.01. The local school board denied the parents' request for manifest educational hardship finding that the circumstances were neither unusual or extraordinary and that the parents had not demonstrated that the current assignment was detrimental or had a negative effect on the student.

The parents want the school district to pay the tuition for the student to attend public school in Newport. The parents placed the student in the Newport school and are paying the tuition themselves.

The parties attended a prehearing and an evidentiary hearing before me. Both parents attended both proceedings. The school district attended with counsel. At the evidentiary hearing, the evidence was largely limited to the evidence that was presented to the local school board at the time it made its decision. Both parents testified. The principal of the middle-high school where the student attended in the district and the superintendent of the district testified for the school district.

Legal Standards

New Hampshire has a state statute and a regulation regarding manifest educational hardship. RSA 193:3 and Ed. 320.01. The regulation contains the detailed requirements and it states:

Ed 320.01 Change of School Assignment.

(a) If a parent(s) or guardian thinks the attendance of the child at the school to which such child has been assigned will result in a manifest educational hardship to the child, a parent or guardian may apply to the school board for a change of school assignment to:

(1) Attend another public school in the same district; or

(2) Attend a public school in another district.

(b) In order to apply to the school board for a change of school assignment based on manifest educational hardship a parent shall demonstrate the detrimental or negative effect on the pupil if the pupil continues to attend the school to which he/she is assigned.

(c) If a school board determines that manifest educational hardship has been found, the school board shall issue a waiver of the school assignment and the student shall be reassigned to a reasonably available public school, in the district or in another district.

(d) Each school board shall establish a policy, which shall allow a school board, with the recommendation of the superintendent, to take appropriate action including, but not limited to, assignment to a public school in another district when manifest educational hardship is shown.

(e) The local school board shall issue a finding of manifest educational hardship if it determines that there is clear and convincing evidence that:

(1) A substantial portion of a pupil's academic, physical, personal and social needs cannot be met by the assigned school or are not found within the student body of the assigned school;

(2) The assigned school's failure to meet the pupil's needs will impair the educational progress of the pupil; and

(3) Another public school, either within the district or in another district, may reasonably meet the pupil's educational needs.

(f) If a parent or guardian is aggrieved by the decision of the school board, cooperative school board, or the authorized regional enrollment area receiving school board, he/she may appeal to the state board in accordance with the provisions of Ed 200.

The local school district has also adopted a policy on manifest educational hardship that states that a change of assignment to another school may occur in "unusual and extraordinary circumstances" and that a parent must demonstrate that the "current assignment is detrimental or has a negative effect on the student and clearly state the relief sought." See School District Hearing Exhibits at 5.

On appeal, the parents have the burden of establishing that the school district made the wrong decision meaning that the parents must show that the school board was presented with clear and convincing evidence that a substantial portion of a pupil's academic, physical, personal and social needs cannot be met by the assigned school, or are not found within the student body of the assigned school; that the assigned school's failure to meet the pupil's needs will impair the educational progress of the pupil; and that another public school, either within the district or in another district, may reasonably meet the pupil's educational needs. Ed 209.02; Ed 320.01.

The parents initially requested manifest educational hardship for two or their children, but in their post hearing submissions now only request it for one child. Thus, this report and recommendation focuses on that student.

Findings of Fact

1. The student is 15 years old.
2. Last school year, the student was suspended from school for 34 consecutive school days for disciplinary reasons.

3. At the end of the suspension, the student did not return to the school district. The student was apparently homeschooled for a while and then attended school in Brookline, Massachusetts.
4. The student returned to the school district on December 7, 2009. The parents did not want the student to return, but did not have other options and did not want ... to be truant.
5. The parents testified that the student also did not want to return to the school district.
6. The parents submitted their request for manifest educational hardship on the same day the student returned to the district, December 7, 2009.
7. The parents contend that the school is retaliating against them and against their children because of a variety of interactions that they have had with school officials over the years.
8. The claimed retaliation towards the student at issue is largely that the student is treated differently and unfairly as compared to other students at the school.
9. The school contends that the parents' unhappiness with school officials and request for educational hardship is all related to their dissatisfaction with the disciplinary process and the student's suspension.
10. The parents testified about the following incidents regarding their ... that they believe show the student was treated differently/unfairly by the school:
 - a. The student was placed in lengthy weekend detentions for being a few seconds late to homeroom class.
 - b. On ... first day back at school, December 7, 2009, the student was hassled by a number of school teachers and administrators and removed from class for wearing a bandana to school because it was an inch or so too low and needed to be pulled up farther on ... head.
 - c. The student was not allowed to play varsity basketball and was told it was because the student was a bad influence on the other players.
 - d. The student has been removed from class on occasion and sent to a special education room even though the student does not receive special education services.
 - e. The student was disciplined for stuffing paper in ... backpack.
11. The school principal testified and provided explanations for each of these items noting that detentions and bandana issues involved the student violating school rules regarding tardiness and school dress polices and that the rules were enforced with other students the same way that they were enforced with this student.

12. The principal testified that the decision regarding basketball was the decision of the coach and that the school made special efforts to try and encourage the student to play basketball.
13. The principal testified that the incidents regarding removal from the class were in the past and were stopped by the principal when the parents informed him about it.
14. The principal testified that the discipline for stuffing paper was an incident where the student was being uncooperative and disruptive in class.
15. The principal testified that the student was doing well academically at the school when the student attended and that ... needs were being met by the school when the student attended.
16. The principal testified that the student did not appear to like being at the school.
17. The superintendent testified that he denied the request for hardship. He did not talk with any of the student's teachers or counselors in making his determination. Instead he relied on the fact that the school has ample opportunities for students in general and was able to meet student needs in general.
18. The parents testified that the student is emotionally upset and in counseling.
19. The parents testified that the student was having a hard time catching up academically because of ... disciplinary suspension/expulsion.
20. At some point after the student's return to school on December 7, 2009, the parents withdrew the student from the school district and placed ... in the Newport School District.
21. The parents are paying tuition to the Newport school district for their ... to attend school in the district.
22. The parents did not present any other evidence regarding the student's academic, physical, personal or social needs or the school district's inability to meet those needs.

Discussion

It is clear from the hearing that there is a large amount of hostility between the parties and that the parents genuinely believe that the school is retaliating against them. There was testimony regarding other alleged retaliatory acts by the school and other incidents between the parties that are not included in the findings of fact or in this discussion as I do not believe it is relevant to educational hardship determination given the legal standards noted above, but it clouded and dominated the evidentiary hearing.

As a result, important information was not really presented by the parents or by the school at the hearing including the student's actual grades, ... actual educational performance and progress or lack thereof, and how the school was or was not meeting the student's specific academic, physical, personal,

and social needs. Instead, the parties bickered over other tangential issues that are apparently the cause of the hostilities between them. Much of what the school provided was general information about how it had a good school and good opportunities for students, as opposed to the specific information about this specific student. The evidence the parents provided is scattered and often unrelated to the legal standards that control the state board's determination (Ed 320.01).

Since the parents have the burden both at the local level and as the appealing party before the State Board, I recommend that the State Board uphold the local board's decision since I cannot say on the record before me that there is clear and convincing evidence that a substantial portion of a pupil's academic, physical, personal and social needs cannot be met by the assigned school, or that the assigned school's failure to meet the pupil's needs will impair the educational progress of the pupil.

Date

Scott F. Johnson
Hearing Officer